



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 7374 OF 2023

(Prakash s/o Kisanlal Soni (Dead) through LRs Vs. Riyaz Ahemad Mohd. Yusuf Khan & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. P.A. Kadu, Counsel for the petitioners.
Mr. D.S. Patil, Counsel for respondent no.1.
Mr. S.N. Bhattad, Counsel for respondent no.2.

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CORAM : ANIL L. PANSARE, J.
APRIL 16, 2025

Challenge is to order dated 8/12/2022 passed below Exh. 155 by the 7th Joint Civil Judge Senior Division, Akola, in Special Civil Suit No. 66/2013. The Court allowed the application filed by respondent no.2 – original defendant no.2 for framing additional issue as to whether the petitioners – original plaintiffs are agriculturist ?

2] Having heard both sides and having gone through the record, it appears that the petitioners' father had filed a suit, being Special Civil Suit No. 66/2013, against the respondents – defendants for specific performance of contract dated 3/3/2012. Issues were framed. The petitioners' father, however, expired and, therefore, the petitioners were brought on record as plaintiffs.

3] Thereafter, respondent no.2 filed an application to frame additional issue on the ground that the petitioners have not pleaded in the plaint that they or

their predecessor, was agriculturist. According to respondent no.2, Section 89 of the Maharashtra Tenancy And Agricultural Lands Act, 1948, prohibits transfer of agricultural land to non-agriculturist.

4] The application was opposed by the petitioners stating therein that they and their father are/were agriculturist. They had filed several documents, viz., 7/12 extracts in support.

5] The documents filed before the trial Court were shown to me across the bar, which speak volumes about the petitioners and their father having been owners of various agricultural lands. What is surprising is that the trial Court has not considered these documents before recording a finding that of necessity to frame issue as to whether the plaintiff – Prakash was agriculturist.

6] Thus, merely on the basis of pleadings in written statement, the aforesaid issue has been framed, that too, by ignoring clinching evidence favouring the petitioners' plea.

7] As such, the learned Counsel for respondent no.2 submits that framing issue is one thing and proof thereof is another and, therefore, the trial Court was fully justified in framing issue. The so called 7/12 extracts could be tendered in evidence to prove that the petitioners are agriculturist. Accordingly, the learned Counsel submits that no interference is called for in writ jurisdiction.

8] I do not find merit in the aforesaid submissions. It is quite fundamental that issues are framed on the basis of averments made by the parties. Here is a case where the petitioners' father filed suit for specific performance of contract. He has not averred that he was agriculturist. That by itself would not mean that there is a dispute as regards his status of agriculturist.

9] In such circumstances, once the respondents, in written statement, have taken a plea that the petitioner is not agriculturist, to which a categorical reply was filed that the predecessor of the petitioners and petitioners themselves were/are agriculturist, and further, documents were filed to that effect, the trial Court was duty bound to consider the documents and ascertain whether the issue of petitioners being not agriculturist would arise at all.

10] The learned Counsel for respondent no.2 submits that the respondents have denied existence of 7/12 extracts or its correctness. However, it is nobody's case that these 7/12 extracts were forged documents and/or were not in existence at the time of filing suit. As noted earlier, there are several documents, viz., 7/12 extracts, which show that the petitioners and their predecessor was agriculturist.

11] The trial Court appears to have lost sight of the fact that it is not a question of framing additional issue but has far reaching consequences. It is so because the aforesaid issue is to be tried by tenancy authority and till decision the suit stands in abeyance. As such, this is

not to suggest that additional issue should be not framed merely because it has far reaching effect, what is suggested is that while framing such issue, the trial Court should have been conscious of certain consequences, and accordingly, should have meticulously gone through the documents placed on record and the averments made in support. Merely because the respondents have come up with a case that the petitioners or their father was not agriculturist is not a reason to frame such an issue.

12] The order impugned, therefore, is contrary to what was placed on record before the trial Court. The Court committed serious error in not considering the vital documents.

13] The petition is accordingly allowed. Order dated 8/12/2022 passed below Exh. 155 by the 7th Joint Civil Judge Senior Division, Akola, in Special Civil Suit No. 66/2013, is quashed and set aside. The application (Exh. 155) is rejected.

(ANIL L. PANSARE, J.)

Sumit